

**Preliminary Rulemaking Activity  
Implementing  
SB 5034 (Chapter 445, Laws of 2005) –  
Electioneering Communications  
*For Discussion on*  
11/30/05**

**OUTLINE**

As described at the October 2005 Public Disclosure Commission meeting, there are a number of rulemaking activities that will occur to implement SB 5034 (Chapter 445, Laws of 2005) – Electioneering Communications. At this time, there are three initial items to be discussed at the November 30, 2005 meeting. Those are:

- I. Next set of proposed revisions to C-6 form (follow-up from October 2005 meeting). (*Page 1*).
- II. Defining undefined terms in “electioneering communication” statutory definition. (*Page 4*).
- III. Defining “general treasury funds.” (*Page 9*).

Here is more detail on these three items.

**I. Revisions to C-6 Form**

*Background.* SB 5034 provides that the Commission is to develop a form for reporting electioneering communications, and it can be on a form that already exists. Section (3)(1). As discussed at the last Commission meeting, the current proposal is to amend the C-6 form to accommodate this reporting. **See next draft of proposed C-6 form amendments.**

Reporting Form for: (check one)

Instructions on Page 3

- ☐ **INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**  
☐ **INDEPENDENT EXPENDITURE ADS** (Appearing within 21 days of an election) — **\$1,000 or more**  
☐ **ELECTIONEERING COMMUNICATIONS, Except Contributions** (Appearing within 60 days of an election) — **\$5,000 or more**

1. Name and complete postal mailing address of sponsor:

E-mail

Telephone

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)

Expenditures \$100 or less not itemized above \$

Amount or Value

\*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.

Total this report \$

Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.  
 \$

3. List of candidate(s) or ballot proposition(s) identified in the advertising.

Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
Continued on attached sheet <input type="checkbox"/>					

Filer Name:

**4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:**

- (a) \_\_\_ An individual using only personal funds.  
 (b) \_\_\_ An individual using personal funds and/or funds received from others.  
 (c) \_\_\_ A business, union, group, association, or other organization using only general treasury funds.  
 (d) \_\_\_ A business, union, group, association, or other organization using general treasury funds and/or funds received from others.  
 (e) \_\_\_ A political committee filing C-3 and C-4 reports. (RCW 42.17.040 - .090)  
 (f) \_\_\_ A political committee filing C-5 reports. (RCW 42.17.093)  
 (g) \_\_\_ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

**5. Sources giving in excess of \$250 for the electioneering communication:**

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	
	Continued on attached sheet <input type="checkbox"/>	Amount from attached pages	
TOTAL FUNDS RECEIVED			

**Sponsor of Independent Expenditure or Electioneering Communication**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17.020. I further certify that the above information is true, complete, and correct to the best of my knowledge.

Signature

Printed Name

Street address

City/State/Zip

Date Signed

Place Signed (city and county)

\*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

## II. Electioneering Communication Terms

*Background:* SB 5034 defines “electioneering communication” [Section 6 – definition (20) (amending RCW 42.17.020)]. One term used in the definition that is not defined is “periodical.” The statute also explains what “electioneering communication” does not include [definition (21)]. Some terms used in the list of exclusions at (21) are not defined. An initial review indicates those terms include, for example, “debate or forum” and “public service announcement.” The Commission could adopt new rules to describe those terms. In addition, the new statute does not clearly explain that websites, emails, telephone calls and leaflet drops are not “electioneering communications.” A new rule could be written to clarify that fact. Finally, another exclusion from an “electioneering communication” is for “slate cards and sample ballots.” The Commission could amend its current rule which describes “slate cards and sample ballots” to state that the language applies to electioneering communications.

### **POSSIBLE NEW RULE – WAC 390-XX-XXX – “Periodical.”**

“Periodical” means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals, generally more frequently than annually.

### **POSSIBLE NEW RULE – WAC 390-XX-XXX – “Debate or Forum.”**

“Debate or forum” means qualifying events under RCW 42.17.020(21)(b) where candidates are invited based upon predefined objective criteria. A qualifying forum may also be scheduled where only one candidate in an uncontested race participates.

### **POSSIBLE NEW RULE – WAC 390-XX-XXX – “Public Service Announcement.”**

(1) “Public service announcement” means a communication that meets all of the following criteria. The communication is:

(a) Publicly communicated by (i) television or radio, (ii) a paper document mailed via U.S. mail, (iii) display on a billboard, or, (iv) display in a hardcopy newspaper or

1 periodical;

2 (b) designed to benefit or promote the community's health, safety or welfare or non-profit  
3 community events;

4 (c) not selling a product or service;

5 (d) sponsored by an organization with a history of routinely providing the community such  
6 outreach public service messages in the service area of the organization;

7 (e) of primary interest to the general public and is not targeted to reach only voters or  
8 voters in a specific jurisdiction;

9 (f) not coordinated with or controlled or paid for by a candidate or candidate's authorized  
committee or a political committee;

10 (g) subject to the policies for public service announcements of the entity broadcasting,  
11 transmitting, mailing, erecting, distributing or otherwise publishing the communication,  
12 including policies regarding length, timing and manner of distribution; and,

13 (h) one for which the arrangements to include a reference or depiction of the candidate or  
14 candidates in the communication were made at least twelve months before the candidate  
15 became a candidate.

16 (2) Examples of public service announcements include but are not limited to  
17 communications regarding non-profit community events, outreach or awareness activities  
18 such as: breast cancer screening, heart disease, domestic violence, organ donation,  
19 emergency or other disaster relief for organizations such as the Red Cross, programs  
20 designed to encourage reading by school children, childhood safety, fund drives for  
charitable programs such as United Way, and similar matters.

21 (3) Candidates who are public officials are also subject to the prohibitions on the use of  
22 public funds and facilities to support or oppose campaigns, as provided in RCW 42.17.128,  
23 42.17.130 and 42.52.180.  
24  
25  
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1       **POSSIBLE NEW RULE – WAC 390-XX-XXX – “Electioneering Communication**  
2       **Exclusions.”**

3       (1) “Electioneering communication” does not include communications listed in RCW  
4       42.17.020(21).

5       (2) “Electioneering communication” also does not include (a) letters to the editor or  
6       comparable communications to news media described in RCW 42.17.020(21)(c); (b)  
7       communications conveyed through websites, emails, telephone calls, or in-person  
8       leaflet/pamphlet drops at street addresses; or (c) communications conveyed in a manner  
9       not specified in RCW 42.17.020(20).

10       **POSSIBLE AMENDMENTS – WAC 390-17-030 – “Sample Ballots and Slate**  
11       **Cards.”**

12       (1) **Intent.** The commission finds that, under certain conditions, expenditures for slate  
13       cards and other candidate listings fall within the scope of RCW 42.17.640 (14)(a) and are,  
14       therefore, exempt from contribution limits and eligible for payment with a bona fide  
15       political party's exempt funds. Slate cards and other candidate listings remain reportable  
16       under chapter 42.17, RCW and subject to the political advertising provisions of the law.

17       The purpose of this exemption from the contribution limits is to allow political parties  
18       and other sponsors to tell the general public which candidates they support. The exemption  
19       is not intended as a device to circumvent the contribution limits and full reporting  
20       requirements by undertaking any degree of significant campaigning on behalf of  
21       candidates.

22       (2) For purposes of RCW 42.17.020(21) and 42.17.640 (14)(a), “**sample ballots**”  
23       means slate cards, or other candidate listings, whether written or oral, that satisfy the  
24       qualifying criteria specified in subsection (10) of this section.

25       (3) Sample ballots constitute political advertising for a slate or list of candidates and  
26       must be properly identified and otherwise in compliance with the ~~political advertising~~  
      provisions of RCW 42.17.505.510 through 42.17.550.

1 (4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW  
2 42.17.640(14) to produce and distribute sample ballots.

3 (b) Expenditures for sample ballots do not count against a bona fide political party's  
4 contribution limit to the candidates listed on the sample ballot. Further, when reporting  
5 sample ballot expenditures, a bona fide political party is not required to attribute a portion  
6 of the expenditure to each of the candidates listed on the sample ballot, but the names of  
7 the candidates must be reported along with the other information required by chapter  
8 42.17, RCW and chapter 390-17, WAC.

9 (5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample  
10 ballots has made an expenditure that does not count against that person's contribution limit  
11 to the candidates listed.

12 (6) **An in-state political committee**, when disclosing expenditures for sample ballots  
13 as part of its C-4 report, is not required to attribute a portion of the expenditure to the  
14 candidates listed on the sample ballot, but the names of the candidates and their respective  
15 party affiliations must be reported along with other information required by chapter 42.17,  
16 RCW and chapter 390-17, WAC.

17 (7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a  
18 C-5 report, is not required to allocate a portion of the expenditure to the candidates listed  
19 on the sample ballot, but must report that an expenditure for sample ballots was made, the  
20 name and address of the person to whom the expenditure was made, the full amount of the  
21 expenditure, and the name, office sought and party affiliation of each candidate listed on  
22 the sample ballot. The report is due no later than the 20th day of the month following the  
23 month in which the expenditure was made.

24 (8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those  
25 expenditures are required to be reported in detail on the lobbyist's monthly L-2 report.  
26 Itemization of these expenditures must include the names and respective party affiliations  
of the candidates listed on the sample ballot, but no portion of the expenditure need be  
allocated to individual candidates listed on the sample ballot.

1 (9) **The candidates listed on a sample ballot** are not required to report any portion of  
2 the expenditure as an in-kind contribution to their campaigns.

3 (10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.**  
4 In order not to count against a person's contribution limit to the candidates listed on a  
5 sample ballot and, in the case of a bona fide political party, in order to be eligible for  
6 payment with contributions received pursuant to RCW 42.17.640(14), a sample ballot  
7 must satisfy **all** of the criteria in (a) through (d) of this subsection.

8 (a) The sample ballot must list the names of at least three candidates for election to  
9 public office in Washington state and be distributed in a geographical area where voters  
10 are eligible to vote for at least three candidates listed. The candidate listing may include  
11 any combination of three or more candidates, whether the candidates are seeking federal,  
state or local office in Washington.

12 (b) The sample ballot must not be distributed through public political advertising; for  
13 example, through broadcast media, newspapers, magazines, billboards or the like. The  
14 sample ballot may be distributed through direct mail, telephone, electronic mail, Web  
15 sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

16 (c) The content of a sample ballot is limited to:

- 17 • The identification of each candidate (pictures may be used);
- 18 • The office or position currently held;
- 19 • The office sought;
- 20 • Party affiliation; and
- Information about voting hours and locations.

21 Therefore, the sample ballot must exclude any additional biographical data on  
22 candidates and their positions on issues as well as statements about the sponsor's  
23 philosophy, goals or accomplishments. The list must also exclude any statements, check  
marks or other indications showing support of or opposition to ballot propositions.

24 (d) The sample ballot is a stand-alone political advertisement. It must not be a portion  
25 of a more comprehensive message or combined in the same mailing or packet with any  
26

1 other information, including get-out-the-vote material, candidate brochures, or statements  
2 about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic  
3 bulletin boards or electronic billboards, the sample ballot must be a separate document.  
4

### 5 6 7 8 **III. General Treasury Funds** 9

10 *Background:* SB 5034 at Section 3(10)(b)(i) (RCW 42.17.565) provides that payments  
11 for electioneering communications must be reported on forms developed by the  
12 Commission by rule. Among among other required information, reporters must identify  
13 "general treasury funds." The term is not defined in the new statute.

#### 14 **POSSIBLE NEW RULE – WAC 390-XX-XXX – "General Treasury Funds."**

15 "General treasury funds" means a collective designation of all of the assets of an  
16 organization which furnish the means for defraying the necessary, usual, ordinary running  
17 and incidental expenses of an organization. General treasury funds are not derived from  
18 special solicitations or receipts, but derive from regular, planned for, and ongoing revenue  
19 streams or sources.  
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